

PROCEEDINGS OF THE HISTORIC CONSERVATION BOARD

MONDAY, MAY 21, 2007

3:00 P.M., J. MARTIN GRIESEL ROOM, CENTENNIAL PLAZA II

The Historic Conservation Board met at 3:04 P.M., in the J. Martin Griesel Room, Centennial Plaza II, with members Senhauser, Sullebarger, Spraul-Schmidt, Kreider, Raser and Young present. Absent: Wallace and Chatterjee.

MINUTES

The Historic Conservation Board unanimously approved the minutes of the May 7, 2007 (motion by Spraul-Schmidt, second by Raser).

CERTIFICATE OF APPROPRIATENESS, 2009 ELM STREET, OVER-THE-RHINE HISTORIC DISTRICT

Staff member Adrienne Cowden presented a staff report on the installation of replacement windows on the side and rear elevations of 2009 Elm Street. The new vinyl windows with six-over-six sandwich grid were installed without a Certificate of Appropriateness. The openings have been framed with 1" lumber, so reduced proportionately.

Ms. Cowden stated that the previous owner, Karen Domine Wolff, had applied for a building permit in 2006 but never completed the application. Ms. Cowden stated that the installed vinyl windows do not meet the Over-the-Rhine Historic District conservation guidelines. She reviewed the guidelines and added that the windows had been installed with a much deeper recess than one would find in a late 19th century Over-the-Rhine Italianate. Ms. Cowden confirmed that the storefront and windows on the Elm Street elevation are not included in the application.

Architect Denny Dellinger and Mr. Dorizios were present to answer questions from the Board. The owner, Jerry Dorizios, stated that he had posted the permit application receipt on the building believing that he had a valid permit for the work.

Ms. Wolff, the previous owner, testified that she had applied for a building permit and mistakenly told the current owner that there was a valid permit for the work. In response to Mr. Kreider and Mr. Young, Mr. Dorizios indicated he was not aware he was in a historic district. Mr. Kreider then asked Ms. Wolff if she had disclosed to Mr. Dorizios in the sale and listing documents that 2009 Elm Street was located in a local historic district. Ms. Wolff answered affirmatively.

Mr. Young expressed his frustration that the proper rules and procedures were not followed. Mr. Dellinger acknowledged the windows were installed without proper approval and that they were a mistake. He indicated that it would cost \$11,600 to replace the windows, which represented a financial hardship for his client. In response to Mr. Kreider, Mr. Dellinger said that it would take significant work to re-install the windows at a shallower depth but this option would cost less than purchasing and installing entirely new windows. He added that Mr. Dorizios intended to restore the existing original storefront and would obtain a COA when he was ready do this work.

Ms. Cowden confirmed for Ms. Sullebarger that the north elevation windows were not highly visible from Elm Street, but that the side and rear elevations were highly visible from Dunlap Street and Colby Alley. Mr. Raser commented that since the rear and side elevation windows were not easily visible from Elm Street, he felt that they should be approved.

Mr. Kreider agreed that the windows should be approved in this circumstance, but that the owner should be required to reinstall them at an appropriate depth based on physical evidence in the building or similar buildings in the district. Mr. Raser further suggested inspecting the Elm Street window openings where the original brickmolds may still be in place.

Mr. Senhauser stated that the most critical piece in the restoration of the building would be the storefront. He instructed Mr. Dorizios and Mr. Dellinger that the storefront and east façade repairs would be carefully scrutinized and that the Board had already compromised with the windows.

BOARD ACTION

The Board voted unanimously (motion by Young, second by Kreider) to approve a Certificate of Appropriateness with the following conditions:

1. Find that the Croft LLC “Charleston” vinyl windows with a six-over-six sandwich grid and installed in a reduced opening with a deeper recess than is appropriate do not meet the Over-the-Rhine Historic District conservation guidelines.
2. Approve a Certificate of Appropriateness for said windows on the condition that they be reinstalled at a historically appropriate depth in the masonry openings and trimmed in a historically appropriate manner and that the final drawings and specifications shall be submitted to the Urban Conservator for review and approval prior to completion.

CERTIFICATE OF APPROPRIATENESS, HILLSIDE REVIEW & ZONING VARIANCES 317, 319 AND 321 BOAL STREET, PROSPECT HILL HISTORIC DISTRICT

Staff member Caroline Kellam presented a staff report on the construction of three individual rear decks on 317, 319 and 321 Boal Street. She said each deck requires both a Certificate of Appropriateness (COA) and a zoning variance for its rear yard setback within the Hillside District.

Ms. Kellam stated that the Board first heard this application at its December 18, 2006 meeting, but was unconvinced that the zoning variances were justified. It tabled the application in order to give the applicant an opportunity to present a stronger case.

The Board reopened the case at its meeting on January 8, 2007. Based on new information presented regarding other rear decks in the historic district, the Board approved a COA and Zoning Variances for the Boal Street decks finding that the additional information documented conditions commonly enjoyed by other property owners and satisfied the Board’s earlier concerns.

Ms. Kellam stated that once construction began in April 2007, Menelaus Triantafillou (a neighboring condominium owner who had been out of the country when the Board heard the application) contacted staff regarding the work. He asserted that he had not received notification of the hearing; had he know of the hearing he would have expressed his objection to the proposal. Margaret Hilvert, attorney with Miles & Sheperdson, was retained to represent the Milton Boal Condominium owners. Ms. Hilvert questioned the validity of the previous hearings and secured a stop work order through the Department of Buildings & Inspections (B&I) pending a rehearing of the application by the Board.

Ms. Kellam explained that the CAGIS mailing tool did not collect addresses for condominiums and these owners had not received notification of the two earlier hearings; any omissions were corrected for the present hearing. She was not aware of this oversight since owners in the adjacent condominium in question had contacted staff and/or written letters of support. Two of these owners have since rescinded their support and sent letters of opposition. In response to Mr. Young, Ms. Kellam said that the objections concern both the proximity and the quality of design and materials.

Ms. Kellam confirmed for Mr. Raser that the project is as approved at the January 8th Board meeting and reasserted staff’s recommendation for approval. Ms. Kellam commented that B&I has recalculated the Zoning Variances necessary for the project since January. The required rear yard setbacks are 17.5’ for 317 and 321 Boal and 15’ for 319 Boal; no side yard variances are necessary.

Mr. Forwood reminded the Board that the applicant had documented 59 other decks in the Prospect Hill Historic District as justification for his decks. He indicated that staff had reviewed its files

regarding the information. He summarized the results focusing on those on the south side of Boal Street.

Mr. Senhauser requested guidance from Julia Carney, Law Department, regarding the conduct of the hearing. Ms. Carney said that the January 8th meeting was a continuation of the December 18th meeting when the project was tabled. She instructed the Board that although it had approved the proposal on January 8th, it needed to consider the proposal as a new application.

The applicants, Derrick Tarver and Robert Adams, were present to answer questions from the Board. Mr. Tarver said that he stood by his testimony at the January 8, 2007 meeting and stated that there had been no changes to the proposal. In response to Mr. Senhauser, Mr. Tarver confirmed that the drawings prepared by architect Scott Rogers were identical to those presented in January. In response to Mr. Kreider, Mr. Tarver stated that the decks were each 10' X 15'.

Ms. Hilvert introduced herself to the Board as representing the Milton Boal Condominium owners, including Mr. Triantafillou. [Mr. Triantafillou distributed photographs of his and the adjacent Boal Street properties to the Board.] She stated that two owners became aware of the project through oral conversations with Mr. Tarver. Mr. Triantafillou was out of town and was not aware of the project. She asserted that her clients should have received written notification of the initial and subsequent hearings. In Mr. Triantafillou's case, the lack of notification denied her client the opportunity to voice his objections to the project.

Further Ms. Hilvert indicated that the Municipal Code stipulates that a variance cannot be detrimental or injurious to the property of the abutting landowner and asserted that this issue was mentioned but not discussed in the staff report. She said that the Ohio Supreme Court ruled that variances must pass a five-point test and claimed that this variance request clearly did not pass the test. She stated that the Board's earlier decision was based on Mr. Tarver's assertion that the variance is required to extend to him a right enjoyed by others in the district. Ms. Hilvert explained that the variance request must first meet all of the other requirements. She pointed out that construction began prior to the issuance of a building permit. She concluded that enhancements to one property should not be at the cost of another. In response to Mr. Raser, Ms. Hilvert indicated her clients opposed the Zoning Variances for the reduced rear yard setbacks and the height of the decks, which loom over her clients' patio.

Ms. Sullebarger pointed out that the proposed decks were below the height of those on the condominium itself and that these decks overlooked the condominium's patio prior to the applicants' project. She stated that she expressed concern about the height of the proposed decks at earlier meetings and her preference that the applicants build a patio at grade. The applicants presented a convincing case that the access to grade was not living space and that they wanted to enjoy the same benefits as their neighbors. She stated that the issue was fairness to all property owners in the district.

Ms. Sullebarger explained that one of the conditions for the variance under the Zoning Code is that it is necessary and appropriate in the interest of historic conservation so as not to adversely affect the historic architectural or aesthetic integrity of the district as well as the individual building. She stated that the Board accepted that there would be some affect to the Boal Street buildings and that the Board routinely approves changes that make historic buildings as viable and livable as possible without harming the historic fabric of the district.

Mr. Triantafillou presented a written report to the Board and stated that in late March 2007 he went to the Building Development & Permit Center and spoke to Richard Hubbell. Mr. Hubbell indicated that a building permit was approved but not yet issued for the project. Mr. Triantafillou then applied for a stop work order, which was granted by the City because of a lack of permit.

Mr. Forwood clarified that the applicants applied for their permit prior to the Board hearing in December 2006, but the permit was not issued until March 2007. The COAs and zoning variances were approved in January 2007 based on the Board's decision, but the applicants did not pick up the permit at that time. When the local building inspector identified that work had begun without a permit in March, he instructed the owners to get the necessary approvals. The applicants returned to the Building Development & Permit Center, secured their permits and renewed work before being halted pending this hearing.

Mr. Triantafillou and his wife oppose the decks. He stated that he read the minutes from the previous meetings and that he disagreed with the applicants that neighbors socialize across decks. He stated that the condominium association spent thousands of dollars to build a stone patio to create an intimate and private outdoor area. The proposed decks would destroy the ambiance and privacy of the patio. He speculated that he would have to call the police if there was too much commotion late at night.

Mr. Triantafillou said that the applicants already have roof decks and have sunlight at the grade level. He concluded that the construction of the decks would adversely affect his property values, have negative visual and noise affects, decrease privacy and limit his enjoyment of the only outdoor space available to him. Mr. Triantafillou confirmed for Mr. Senhauser that his own building and not the applicant's decks shaded his stone patio.

In response to Mr. Young, Mr. Triantafillou confirmed that the stone wall and fence shown in the photographs belonged to the condominium association. He added that the circular staircase leading to the patio was 5 feet from the property line.

Mr. Triantafillou stated that he felt the Board should consider the unique circumstances of Prospect Hill and the close proximity of the properties. He stated that if the applicants want more outdoor space, they should build it at grade. Mr. Raser said that due to required setbacks under the Zoning Code, variances were required for any deck at all. He asked Ms. Hilvert if she agreed that by requesting the Board to deny any variance she was not imposing undo hardship on Mr. Taver and Mr. Adams. Ms. Hilberg responded that her clients did not oppose a ground level patio/deck.

Ms. Spraul-Schmidt commented that the applicants had the right to use their property. Mr. Kreider agreed and stated that denying the variances may constitute a taking from the applicants. The Board looks at all situations when making a decision. He stated that the Board heard testimony and took evidence before granting the variance for the decks. Since the Board was looking at the proposal as a new application it would hear Mr. Triantafillou's testimony and take it into consideration.

Ms. Spraul-Schmidt pointed out a statement in Mr. Triantafillou's report that implied that the applicants would be noisy late at night on the decks and cause a disturbance that would necessitate calling the police. She indicated it was an offensive and unnecessary remark. Mr. Triantafillou apologized for the statement. He said his bedroom window would be a short distance from the decks, and he was genuinely concerned about noise. Mr. Kreider stated that given the location and surrounding hard surfaces, there would not be a significant difference in noise levels from either a deck or a patio.

Mr. Tarver expressed his surprise at Mr. Triantafillou's letter and its implications. He said he had lived on Boal Street for over six years and believed he had a good relationship with his neighbors. Mr. Tarver indicated that the basements on his properties are damp, with inadequate interior access, and distributed photographs to the Board. He stated that the roof decks on his properties are accessed through bedrooms and he wanted outdoor space adjacent to his living space. Mr. Tarver commented that a staircase from his living room to grade would take up a large portion of the site and that enlarging the interior stair would require structural modification and proportionately reduce the living space.

He stated that he and Mr. Adams had followed all rules and procedures. He indicated that most of his neighbors remained supportive and presented two additional letters of support to the Board.

Mr. Kreider asked that Mr. Tarver detail the difficulty of using the ground level space for a patio. Mr. Tarver stated that the staircases to the basement level are narrow and steep. Rebuilding the staircase would be difficult and expensive. Mr. Adams indicated that the walls were frequently wet, particularly of late due to roadwork on Boal Street, and likely impossible to finish with drywall. Currently the basement is used for storage. Mr. Tarver estimated his construction costs (to date) on the decks to be \$8,000.

Rita Stull, condominium owner, said she had always been friendly with the applicants and regretted that things had come to this. She indicated that she has worked with the Board in the past and made an effort to follow the rules. Ms. Stull did not want to jeopardize her relationship with her neighborhoods by objecting to their project and acknowledged that she told Mr. Tarver she supported construction of the decks. She felt that it was the Board's responsibility, not hers, to tell an applicant no and be the "bad guys". She admitted that she thought the Board would deny Mr. Tarver's application. Ms. Stull stated she did not want the decks and had retained Ms. Hilvert to protect her rights.

Mr. Young stated that the role of the Historic Conservation Board was not to be the "bad guys". It is incumbent upon residents to honestly express their opinions and to withhold support if they have concerns or objections. Mr. Kreider agreed and added that the Board would not do the "dirty work" that the neighbors avoided. He stated that when neighbors send a letter of support for an application they should be honest and sincere.

Mr. Kreider stated that the condominium's patio currently did not enjoy much privacy. The new decks would not shade the patio and there was no conclusive evidence of noise. He said he was in favor of approving the variance for the decks.

Mr. Senhauser stated that he was disappointed with the quality of the materials and the detailing. Mr. Tarver responded that the Board had the opportunity to review all of the plans and materials prior to approving the COA.

Mr. Raser stated that initially he thought the issue was the size of the decks. He said he felt the applicants had the right to have a deck and questioned the condominium owner's assertion that only a ground level deck was acceptable.

Mr. Young stated that as a new Board member he was not privy to the history of the application and had not attended the earlier meetings. He felt it best to abstain from voting.

BOARD ACTION

The majority of the Board voted (motion by Raser second by Kreider; **nay, Sullebarger**; abstention Young) to take the following action:

1. Approve a zoning variance from Section 1435-35 Relationship to Variances, Special Exceptions and Conditional Uses of the Zoning Code for 317 – 321 Boal Street that would allow a rear yard setback of 5' instead of the required 17.5' for 317 and 321 Boal Street and a rear yard setback of 5; instead of the required 15.0' for 319 Boal Street finding that given the current information such relief from the literal implication of the Zoning Code is necessary and appropriate in the interest of historic conservation and the applicant has documented common conditions enjoyed by other property owners in the neighborhood and satisfied the HCB's earlier concerns.
2. Approve a Certificate of Appropriateness for the construction for the rear decks at 317, 319 and 321 Boal Street.

ADJOURN

As there were no other items for consideration by the Board, the meeting adjourned.

William L. Forwood
Urban Conservator

John C. Senhauser
Chairman

Date: _____